

Variance Meeting

License and Variance Board Meeting : April 26, 2023
10:00 am Smyrna City Hall

Ms. Penny Mocerì
Deputy City Administrator
City of Smyrna

Mr. Richard Garland
Director, Parks & Recreation
City of Smyrna

Mr. Bo Jones
Assistant Public Works Director
of W/S, Sanitation, Fleet
City of Smyrna

RE: Opposition to Variance Request V23-030
Allow emissions station within 1,000 feet of another emissions station
860 Concord Rd.

BY: Dennis Tyrone, KK&T Inc. - owner of 852 Concord Rd.

Dear Board Members,

The following written statement outlines my opposition to the Variance application before you requesting the property at 860 Concord Rd. be allowed to operate as an emissions station despite its proximity to the new Valvoline facility just down the street at Concord and South Cobb Drive.

I would like to first begin by requesting a full cycle deferral for this matter. As I did not receive notification for this request until Saturday afternoon, I don't feel enough time has been given to undertake the necessary due diligence needed to ensure that my right to due process has been met. Additional time is needed to confer with Council, identify expert witnesses for affidavit submissions, undertake a review of all available information, whether public or subject to subpoena, to define lot size, and to review and present violations in both law and ordinances that would result from the granting of such a variance. I do hereby submit this request as a matter of record.

Of course, if this Committee should feel denial of the applicant's request is warranted after reviewing all input, the above requested continuance would be moot and a denial of the variance request should proceed.

I would first like to point out that there are 11 existing emissions stations already operating within a 3 mile radius of this location. A list of these stations and maps of their locations in relation to the subject property is attached as Exhibit One. In fact, one of these existing locations is owned and operated by the applicant. It is a mile away from the proposed new

station. Clearly, another station is duplicative and unnecessary. As such, no hardship to the applicant would occur with a variance denial.

As a result of multiple eminent domain takings, the subject property now faces ingress and egress challenges. A single driveway exists for both entry and exit. The front parking has been virtually eliminated further exacerbating vehicle maneuverability. The one remaining pathway along the right side of the property to the lot's rear parking is further encumbered by a property line encroachment onto the 852 Concord Rd. property. This incursion was illegally absconded by the original property owners via pavings and curb placement. Once corrected, ingress to the back will be difficult if not impossible. In fact, the property is so inaccessible City Sanitation trucks had to come onto the 852 Concord property to undertake dumpster collections. These factors of diminished lot size and the resulting logistical challenges they present constitute clear rational for variance denial.

The above described difficulties associated with such a diminished lot size are in support of Cobb County's Ordinance §134-227 (4) which clearly states 20,000 square feet is the minimum lot size requirement. Unfortunately, years of eminent domain takings have transformed this lot from simply non-conforming to a non-economic remnant that is only suitable for assemblage.

This lot size minimum and associated restrictions are further supported at the City level with the City of Smyrna Ordinance Article VIII, Sec. 802 - Nonresidential districts which defines GC (General Commercial) lots to have a minimum size of 20,000 square feet. The subject property has approximately 14,000 square feet or less. In addition, the above described Ordinances are further supported with the area specific size requirements outlined by the Concord Road Overlay District. Both the County and City Ordinances coupled with the Overlay requirements clearly support, without exception, the denial of this variance application.

Further to the issues described above, the approval of this application would be in direct conflict with the City's Continuation of Use Ordinance, Article XI.- NonConforming Uses which states that the nonconforming use of this building and land is allowed provided "that the nonconforming use of a building, structure, or land shall not be changed to another nonconforming use or reestablished after discontinuance for one year." The last rendition of use for this property was as a residential real estate brokerage some 5 or more years ago, not an emissions station.

Finally, I would like the Committee Members to consider and recognize that the approval of this application would have a significant impact on my redevelopment efforts for 852 Concord Rd. Past interested National Tenants always raised concerns about making a potential multimillion dollar investment next to what was a used car lot. Would another emissions station truly constitute the highest and best use of this non-economic remnant within this zoned(Sec. 711) NS, neighborhoods shopping district? My efforts will continue to identify and partner with a Nationally recognized or destination specific tenant for my property. I can assure you what is in proximity next door will materially impact their decision to invest . The redevelopment of the Four Corners area should resume and move forward so that the citizens and residents of the area are the recipients of improvements that should benefit the greater good.

I therefore respectfully request this Variance application be DENIED.

Faithfully submitted,
Dennis Tyrones

Speedemissions

4.5 ★★★★★ (125)

Car inspection station · 1869 Cobb Pkwy SE

Open · Closes 6PM · (770) 953-2043

"A great place for emissions testing."

Website

Directions

Quick Emissions Express

4.1 ★★★★★ (30)

Smog inspection station · 4641 S Atlanta Rd SE

Closes soon · 5PM · Opens 9AM Tue · (770) 989-1954

"Fast and reasonably priced emissions inspection for \$25."

Directions

Spring Emissions

4.8 ★★★★★ (199)

Car inspection station · 1685 Spring Rd SE

Open · Closes 6PM · (404) 478-7226

"This is where you want to go for your emissions!!!"

Website

Directions

DEKRA Emission Check

4.6 ★★★★★ (389)

Car inspection station · 3273 Atlanta Rd SE

Open · Closes 7PM · (770) 432-5226

"Great emissions spot ... quick and perfect stop before work!"

Website

Directions

Car Spa Car Wash, Oil Change, & Emissions Testing

3.5 ★★★★★ (675)

Car inspection station · 2330 Windy Hill Rd SE

Open · Closes 7PM · (770) 955-9720

"Got the emissions test and free car wash."

Website

Directions

Starship Emission Testing

4.9 ★★★★★ (140)

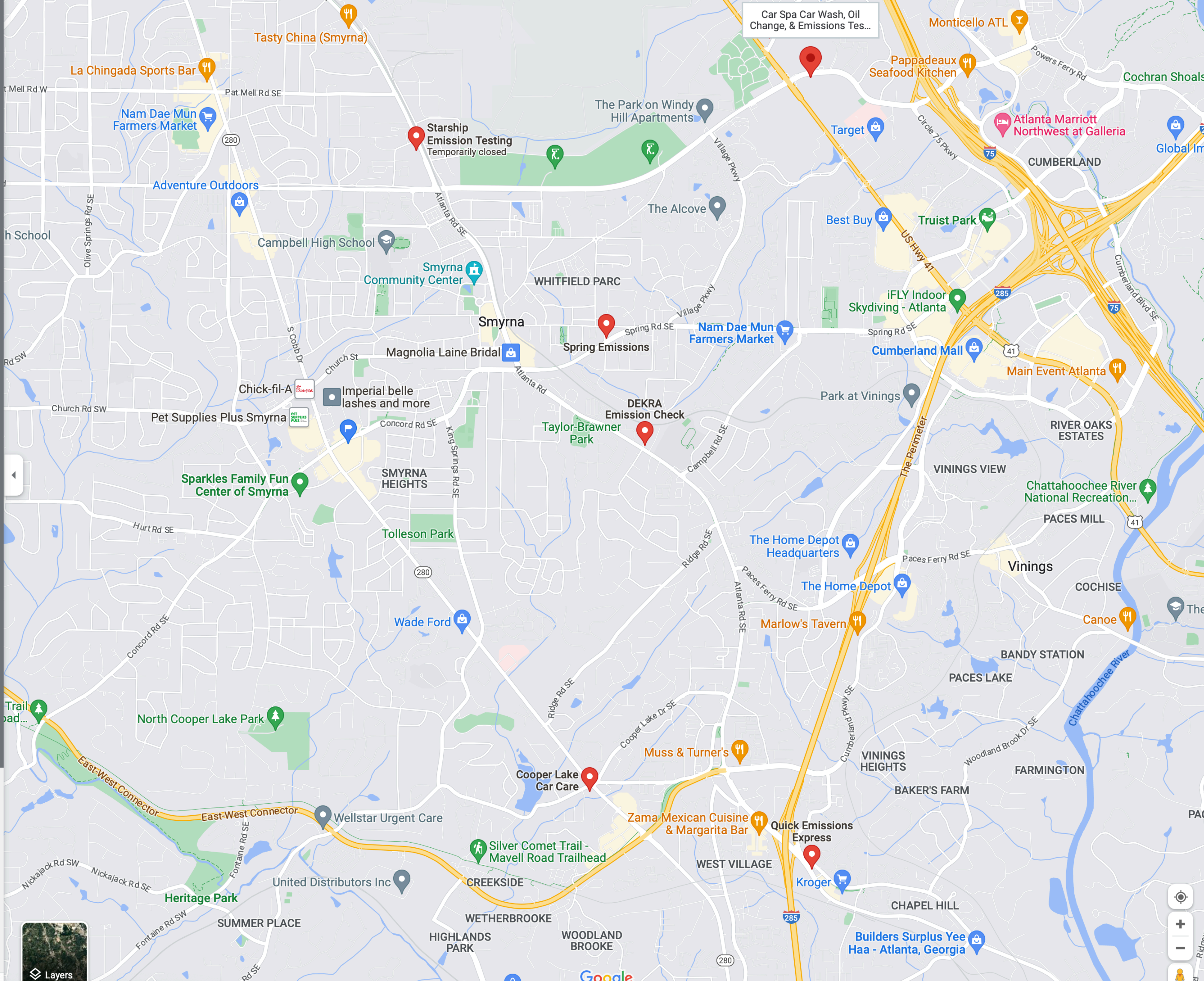
Auto restoration service · 2274 Atlanta Rd SE

Temporarily closed · (770) 726-2934

"Excellent place for emission testing."

Website

Directions



Austell Emission Center

4.4 (87)

Car inspection station · 1911, 4612 -3 Austell Rd

Open · Closes 5PM · (770) 657-7070

"Nice Man who does emissions!"

Website

Directions

Wilmott's Emission

4.6 (46)

Car inspection station · 2688 Austell Rd SW

Open · Closes 5PM · (678) 842-5887

"I love having my emission test done here."

Directions

Akaya Emissions LLC

4.7 (97)

Car inspection station · 1355 East-West Connector

Open · Closes 5PM · (678) 398-5205

"Great place to get your emissions.."

Directions

Testing Wilson

4.9 (28)

Car inspection station · 3731 Austell Rd SW

(770) 438-1453

"Best place for getting your emissions done"

Directions

Halibut emissions

4.3 (21)

Vehicle inspection · 2561 Austell Rd SW

Open · Closes 6PM · (770) 405-8091

Directions

Meineke Car Care Center

4.3 (115)

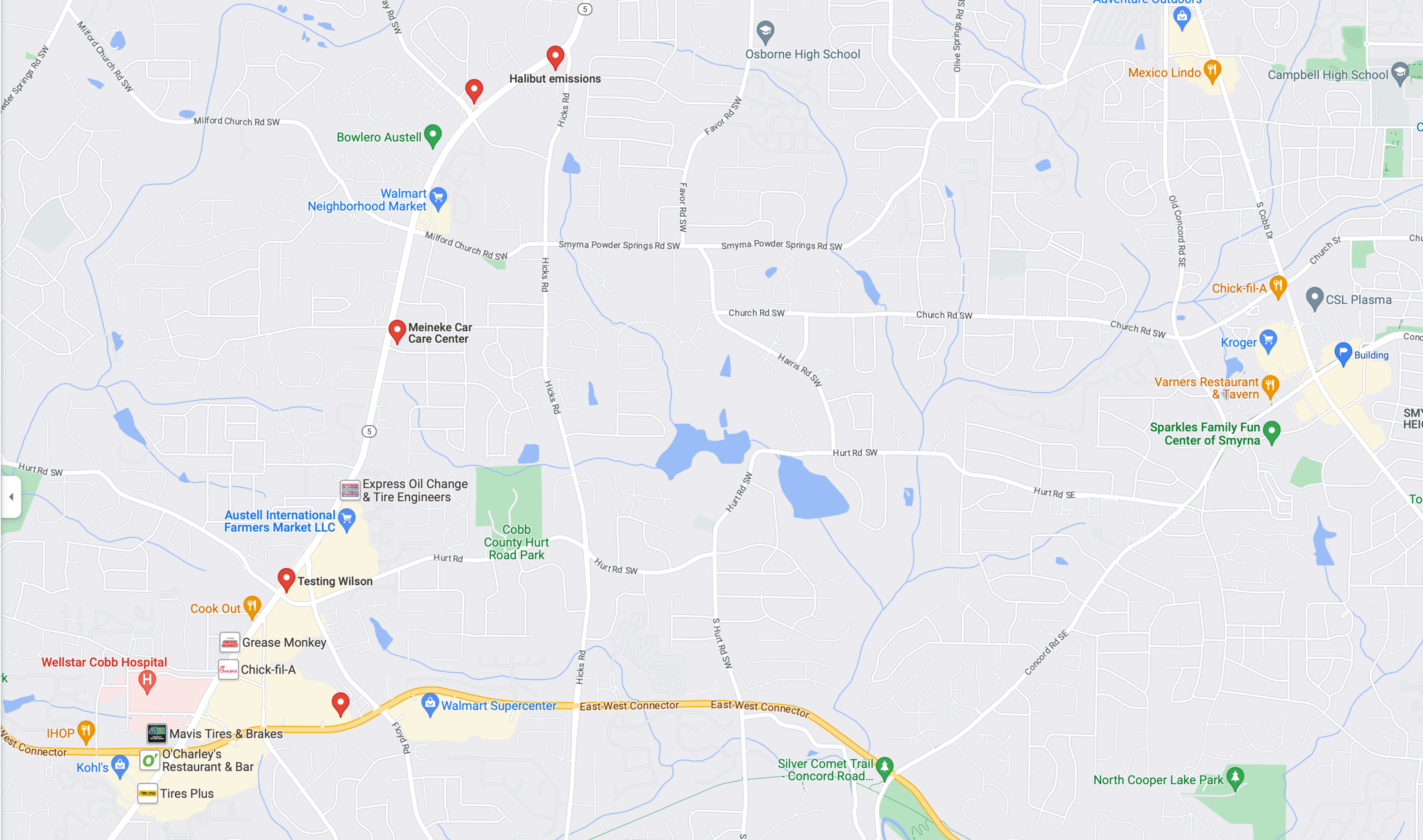
Auto repair shop · 3195 Austell Rd SW

Open · Closes 6PM · (678) 383-2879

Website

Directions

You've reached the end of the list.



§ 134-227. GC general commercial district.

Latest version.

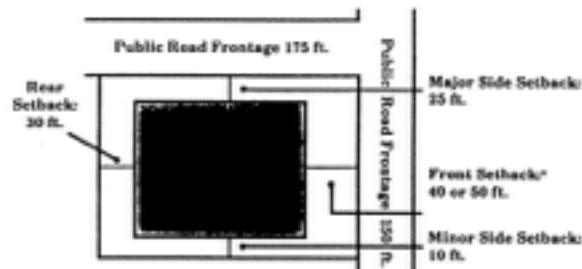


- (4) Lot size and setback requirements. Lot size and setback requirements are as follows:
- Minimum lot size: 20,000 square feet.
 - Minimum lot width at front setback line: 60 feet.
 - Minimum public road frontage: 50 feet.
 - Minimum building setbacks: As shown and applied in the following diagram:

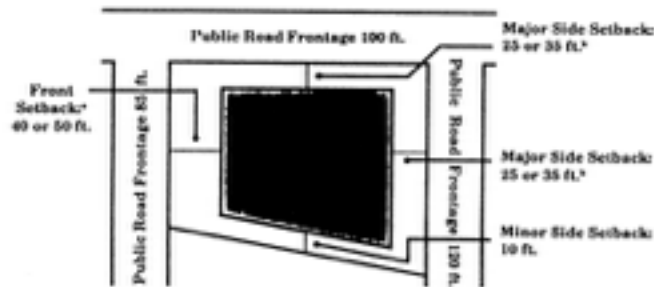
MINIMUM BUILDING SETBACK REQUIREMENTS FOR GC DISTRICT

Note: All setbacks shall be measured from future right-of-way.

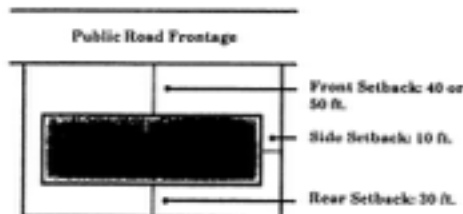
GC



Example for Property with two (2) Public Road Frontages









Example for Property with three (3) Public Road Frontages



Example for Property with one (1) Public Road Frontage

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-      
- > Chapter 80 - PROPERTY MAINTENANCE

> Chapter 82 - SIGNS

> Chapter 86 - SOLID WASTE

> Chapter 90 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

> Chapter 94 - TAXATION

> Chapter 95 - TELECOMMUNICATIONS

> Chapter 98 - TRAFFIC AND VEHICLES

> Chapter 102 - UTILITIES

> Chapter 106 - VEGETATION

> Chapter 110 - VEHICLES FOR HIRE

> APPENDIX A - ZONING ORDINANCE

> ARTICLE I. - TITLE

> ARTICLE II. - SHORT TITLE

> ARTICLE III. - PREAMBLE AND ENACTMENT CLAUSE

> ARTICLE IV. - DEFINITIONS

> ARTICLE V. - GENERAL PROVISIONS

> ARTICLE VI. - ESTABLISHMENT OF DISTRICTS

> ARTICLE VII. - USE PROVISIONS

> ARTICLE VIII. - AREA, YARD AND HEIGHT REQUIREMENTS

Sec. 801. - Residential districts.

modified

Sec. 802. - Nonresidential districts.

modified

> ARTICLE IX. - OFF-STREET PARKING AND LOADING REQUIREMENTS

> ARTICLE X. - PLANNED DEVELOPMENT

> ARTICLE XI. - NONCONFORMING USES

> ARTICLE XII. - EXCEPTIONS AND

Sec. 802. - Nonresidential districts.

modified



EXPAND

				Minimum Yard Requirement ¹					
				Minimum Front Yard Setback from Street Right-of-Way Line (feet)					
Districts	Minimum Lot Area (square feet)	Maximum Lot Coverage by Buildings and Other Structures Including Paving (percent)	Minimum Lot Width at Setback Line (feet)	Major Thoroughfares	Minor Thoroughfares	Other	Minimum ² Side Yard (feet)	Minimum ³ Rear Yard (feet)	Maximum Height of Structures ⁵ (feet)
CBD	None	100	None	12	12	12	0	0	35 or 3 stories
LC	8,000	80	85	50	40	35	10	30	55 or 5 stories
NS	20,000	100	100	50	40	40	15	30	55 or 5 stories
OI	20,000	80	100	75	50	50	15	40	55 or 5 stories
GC	20,000	100	100	50	40	40	10 ⁴	30	(Additional height must be approved by the mayor and city council)
OD	30,000	80	100	75	50	50	20	30	
LI	40,000	90	100	75	50	50	20	30	
HI	40,000	90	150	75	50	50	20	40	55 or 5 stories
PS	20,000	100	100	50	40	40	10 ⁴	30	

¹ No building in any of the nonresidential districts shall be located closer than 50 feet to any property line which abuts a residential district.

² If a side property line abuts a railroad right-of-way, no side yard is required.

³ If a rear property line abuts a railroad right-of-way, no rear yard is required.

⁴ May be reduced to zero if using common wall with adjoining property owners.

⁵ Buildings in excess of 35 feet must be approved by the fire chief to insure adequacy of fire protection facilities and services.

(Mo. of 3-10-75; Ord. of 12-29-77, § 1; Ord. of 3-3-80 (84-3), § 1; Ord. of 11-7-83 (83-12), § 1; Ord. of 6-6-88 (88-15), § 1; Ord. of 11-4-91 (91-40); Ord. No. [2018-18](#), 10-1-18; Ord. No. [2022-13](#), 6-6-22)

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CODE OF ORDINANCES CITY OF SMYRNA, GEORGIA

SUPPLEMENT HISTORY TABLE modified

PART I - CHARTER AND RELATED LAWS

RELATED LAWS COMPARATIVE TABLE

Chapter 1 - GENERAL PROVISIONS

Chapter 2 - ADMINISTRATION

Chapter 6 - ALCOHOLIC BEVERAGES

Chapter 10 - AMUSEMENTS AND ENTERTAINMENTS

Chapter 11 - RACING EVENTS

Chapter 14 - ANIMALS

Chapter 18 - BUILDINGS AND BUILDING REGULATIONS

Chapter 22 - BUSINESSES

Chapter 26 - CEMETERIES

Chapter 30 - CIVIL EMERGENCIES

Chapter 34 - COURTS

Chapter 38 - ELECTIONS

Chapter 42 - EMERGENCY SERVICES

Chapter 46 - ENVIRONMENT

Chapter 50 - FIRE PREVENTION AND PROTECTION

Chapter 54 - FLOODS

Chapter 58 - LAW ENFORCEMENT

Chapter 62 - MANUFACTURED HOMES AND TRAILERS

Chapter 66 - OFFENSES AND MISCELLANEOUS PROVISIONS

Chapter 70 - PARKS AND RECREATION

Chapter 74 - PEDDLERS AND SOLICITORS

Sec. 711. - NS, neighborhood shopping district.



The intent of this section, in establishing the NS district, is to provide for the development of planned shopping centers and related limited retail activities, designed to serve the immediate neighborhood in which such uses are located.

Within any NS commercial district, the following uses shall be permitted:

(711.1) Planned shopping development in accordance with the provisions of [section 1011](#).

(711.1.2) Automobile broker office.

(711.2) Automobile service stations, provided they are located in a planned shopping development, and further provided that no major auto repair shall be permitted and gasoline or other service facilities are located not less than 15 feet from any property line.

(711.3) Banks.

(711.4) Day nurseries and kindergartens, provided that:

- (1) The lot on which such uses are established shall have access on a major or minor thoroughfare.
- (2) There shall not be less than 35 square feet of usable space per child. Kitchens, bathrooms, closets, halls, storage areas or rooms, offices, rooms designated for staff use, other single use areas and space occupied by adult size furniture shall be excluded in determining usable space. The minimum size of the outdoor area must be equal to 100 square feet × one-third of the center's licensed capacity for children.
- (3) The outdoor play area shall be enclosed by a fence not less than four feet in height.
- (4) A circular drive shall be provided for off-street loading and unloading of children.
- (5) All applicable state and county regulations are complied with.

(711.5) Electrical supply stores provided there is no outdoor storage of materials, supplies, equipment or vehicles.

(711.5.1) Emission and inspection stations provided that:

- (1) No temporary buildings and/or tents are to be utilized;
- (2) Paint colors shall be selected from the approved palate of Pantone Colors identified in section 717.173(b) of the Zoning Ordinance;
- (3) Subject to the requirements of the Sign Ordinance;
- (4) No licensed location for an emissions or inspection station shall be located closer than 1,000 feet to any similarly licensed emissions or inspection station location; and
- (5) If constructed in an existing parking lot, the facility and stacking lane shall not occupy any required onsite parking space or encroach into any minimum required driveway width.

(711.6) Laundry and dry cleaning pickup stations, and coin-operated laundries and dry cleaning establishments having not more than 2,000 square feet of floor area and no

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Sec. 513. - Vision clearance at intersections.

Sec. 514. - Yards and other spaces.

Sec. 515. - Townhome design standards.

new

➤ ARTICLE VI. - ESTABLISHMENT OF DISTRICTS

➤ ARTICLE VII. - USE PROVISIONS

➤ ARTICLE VIII. - AREA, YARD AND HEIGHT REQUIREMENTS

➤ ARTICLE IX. - OFF-STREET PARKING AND LOADING REQUIREMENTS

➤ ARTICLE X. - PLANNED DEVELOPMENT

▼ ARTICLE XI. - NONCONFORMING USES

Sec. 1101. - Continuation of use.

Sec. 1102. - Extension of building, structure or use.

Sec. 1103. - Restoration of building.

Sec. 1104. - Nonconforming use of annexed property. modified

➤ ARTICLE XII. - EXCEPTIONS AND MODIFICATIONS

➤ ARTICLE XIII. - ADMINISTRATION, ENFORCEMENT, PENALTIES AND REMEDIES

➤ ARTICLE XIV. - ZONING VARIANCE

➤ ARTICLE XV. - AMENDMENTS

➤ ARTICLE XVI. - LEGAL STATUS PROVISIONS

➤ ARTICLE XVII. - APPEALS OF ADMINISTRATIVE DECISIONS

➤ APPENDIX B - SUBDIVISION REGULATIONS

➤ APPENDIX C - FRANCHISES

➤ APPENDIX D - DESIGN SPECIFICATIONS FOR STORM DRAINAGE, ROADS, CONSTRUCTION

< [Sec. 1015. - Development standards for high-rise apartment development.](#)

[ARTICLE XII. - EXCEPTIONS AND MODIFICATIONS](#) >

ARTICLE XI. - NONCONFORMING USES



Sec. 1101. - Continuation of use.



The lawful use of any building, structure or land existing at the time of the enactment of this ordinance or amendment thereto may be continued even though such use does not conform with the provisions of this ordinance, provided that the nonconforming use of a building, structure, or land shall not be changed to another nonconforming use or reestablished after discontinuance for one year.

Sec. 1102. - Extension of building, structure or use.



No nonconforming building, structure or use shall be extended, nor shall its total value be enhanced, unless such extensions or alterations conform with the provisions of this ordinance. However, a nonconforming use may be extended throughout those interior parts of a building which were designed for such use prior to the adoption of this ordinance or any subsequent amendments thereto, even though such extension may enhance the building's total value.

Sec. 1103. - Restoration of building.



Any nonconforming building or any building containing a nonconforming use, which has been damaged by fire or other cause, may be rebuilt and used as before if such reconstruction is completed within one year of such damage. However, if such building or structure has been damaged to an extent exceeding 50 percent of its replacement cost at the time of such damage or destruction, as determined by the building inspector, any repair, reconstruction, or use of such building or structure shall be in conformity with the provisions of this ordinance.

(Ord. of 12-29-77, § 1)

Sec. 1104. - Nonconforming use of annexed property.

modified



- (a) Any parcel or parcels of land annexed to the city (a) having multifamily dwelling use; (b) consisting of ten or more acres of land; and (c) containing existing buildings and structures comprising a density of greater than 12 units per acre, shall constitute a legal nonconforming use of such land and the buildings and structures located thereon, in accordance with this ordinance. Moreover, notwithstanding anything to the contrary contained in section 1103 of this ordinance, in the event any building or structure on such land is damaged to an extent exceeding 50 percent of its replacement cost at the time of such damage or destruction, as determined by the city building inspector, than any replacement repair, reconstruction or use of such building or structure may be substantially [the] same as existed immediately prior to such damage, including, without limitation, the density (units per acre) and setback encroachments (if any) that existed